

RECEIVED
FEDERAL ELECTION
COMMISSION

2016 DEC 23 AM 10:31

BEFORE THE FEDERAL ELECTION COMMISSION

)
) MUR 7100 CELA
)

RESPONSE OF THE TRUMP ORGANIZATION TO THE COMPLAINT

The Trump Organization ("Organization") provides this response to the Complaint and supplements in the above-captioned MUR. We respectfully request that the Federal Election Commission ("FEC" or "Commission") dismiss the Complaint and close the file because there is no reason to believe the Organization has violated any provision of law.

BACKGROUND

Before Donald J. Trump ran for President, he was a successful businessman with instant name recognition that affords credibility and value to products that bear his name. His eponymous organization – which he founded and for which he serves as the chief executive – owns and administers countless investments worth billions of dollars. It is the entity with primary responsibility for building, maintaining, and defending the extraordinarily valuable "Trump" brand name.

The Complaint and supplements highlight various moments when the President-elect's campaign and his business interests crossed paths. In an effort to assert that Mr. Trump profited from his campaign, Complainant strings together dozens of news articles chronicling months of unrelated events that occurred over the course of the presidential campaign. At bottom, however, the Complaint's only real allegation is that Mr. Trump has impermissibly used campaign funds for personal use. There is no merit to that accusation. As to the Organization, the Complaint's allegations fall into three categories: (1) Mr. Trump conducting ongoing

business during the election cycle; (2) the campaign payments for rent and other fees to the Trump Organization for using its resources, as required by law; (3) Mr. Trump defending his businesses and discussing business issues raised by his opponents at campaign events. As demonstrated below, these allegations do not state a violation of the Federal Election Campaign Act of 1971, as amended (the "FECA" or the "Act") or FEC regulations. Complainant's ultimate goal was merely to garner headlines on behalf of his partisan organization in the midst of a closely fought political campaign and to tar Mr. Trump and his businesses. Yet, as the below response will demonstrate, the Trump Organization scrupulously abided by the law and the Commission should dismiss it as a Respondent and close the file because there is no reason to believe a violation has occurred.

ANALYSIS

The Complaint asserts that Mr. Trump or his campaign violated the law's prohibition on personal use of campaign funds. The law defines "personal use" as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 C.F.R. § 113.1(g). The Trump Organization was not the beneficiary of campaign funds, except to the extent it acted as a commercial service provider. In those instances, the Campaign paid the Trump Organization fair market value for the use of its facilities, as required by law. In sum, the Trump Organization adhered to the law and should be dismissed as a Respondent.

I. HOLDING BUSINESS EVENTS DURING AN ELECTION CYCLE PAID FOR WITH CORPORATE FUNDS IS NOT PROHIBITED BY FECA.

The Complaint suggests that various business events held on behalf of the Trump Organization and hosted by Mr. Trump during the election cycle were impermissible. But

18044443944

Commission precedent demonstrates that a candidate is not forbidden from continuing his businesses during a campaign. And none of the business events that Mr. Trump held were funded by campaign funds and could thus be considered "personal use." For example, the Complaint cites a March press conference held outside the Trump International Hotel in Washington, DC and a reopening of a Trump resort and golf course in Turnberry, Scotland as two events that must have been personal use of campaign funds. For support, the Complaint cites the fact that "artist's renderings of his hotel" were around a podium that read "Trump Hotels" at the Washington press conference, and that Mr. Trump attended a "ribbon cutting" "to promote the renovations to his resort" in Scotland. Complainant even asserts that "[t]hese promotional and marketing events are activities that the Trump Organization should be conducting; they are not 'in connection with the campaign' but rather events in connection with Mr. Trump's business interests." But that is precisely why the *Organization* paid for these events, *not* the campaign. The Washington press conference in March was a Trump Hotels event—hence, the "Trump Hotels" signs. The grand reopening of Turnberry too was an Organization event, which the Organization coordinated and paid for. These events were nothing more than business events hosted and paid for by the Trump Organization; thus they do not constitute the personal use of campaign funds.¹

A businessman running for office does not have to neglect his businesses. And if the press chooses to cover a business event and overlay its coverage with a campaign context, that does not change the legality of the event (or who paid for it). Mr. Trump is the head of Trump Organization, which is a complex conglomeration that could not be neglected during the course

¹ The fact that the Turnberry event was noted on the campaign website does not convert the grand reopening into a campaign event. Alerting the public and media to the candidate's whereabouts is not a violation of federal election law. In fact, candidates who are incumbent officeholders routinely advise the press when their official duties will take them away from the campaign trail.

of the campaign. Thus, Mr. Trump understandably continued to be involved in his business. And while most candidates for President have not been in the same position, the law does not prevent the arrangement. Indeed, Commission regulations and precedent directly permit candidates running for office to continue their business relations. *See, e.g.*, 11 C.F.R. § 114.15(b)(3)(B)(ii) (providing safe harbor from Electioneering Communications for communications that propose a commercial transaction); Advisory Opinion 2004-31 (Darrow) (determining that advertisements for car dealership bearing the candidate's name are not electioneering communications or coordinated with the candidate); MUR 6013 (Teahen) (dismissing complaint regarding long-running business advertising).

Therefore, the Commission should not find that the business events referenced in the Complaint amounted to personal use of campaign funds, because they were business events paid for and coordinated by the Organization and did not involve the use of campaign funds. In short, there is no reason to believe a violation of law occurred and the Complaint must be dismissed.

II. THE CAMPAIGN'S PAYMENTS OF EXPENSES TO TRUMP BUSINESSES WERE NOT ILLEGAL; THEY WERE LEGALLY REQUIRED.

The Complaint makes conclusory statements that the campaign's payments to entities owned by the Organization amount to a violation of the Act. But the law *requires* the campaign to pay the Organization the normal and usual rates when the campaign uses the Organization's locations, entities, and supplies. *See* 100.52(d)(1) ("the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution."). In fact, if the campaign had not paid for the goods and services provided by these entities, it would have resulted in an unlawful receipt of an in-kind corporate contribution and given rise to another set of compliance issues. Thus, the campaign's payment for campaign events, lodging, and other uses of the Organization's resources was a permissible

and *required* use of campaign funds. See 52 U.S.C. §30114(a) ("A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual (1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual.").

In an October Supplement, Complainant claims the campaign paid approximately \$140,000 for each of three events held at the Organization's Mar-A-Lago Club. See Supp. A. There is no allegation that the event was for personal use. Instead, Complainant speculates that the campaign paid the Trump Organization in excess of the fair market value for the use of the facility. But Complainant provides no basis for this allegation. It contains no information on the usual rate for events comparable to the ones held by the campaign at Mar-A-Lago. It is certainly reasonable that a large event on behalf of a major party's presidential nominee (such as the ones held by the Trump Campaign), requiring lighting, staging, seating, lodging, and more would cost a significant amount.²

Complainant points to an event held by the Florida Republican Party at Mar-A-Lago in 2014, which supposedly cost \$4,855.65. But the Complaint offers no comparison of that event to the Trump campaign events. According to publicly available reports, the 2014 event was held outside and attended by 50 people. The Trump campaign events, in stark contrast, were held in large ballrooms with sets, stages, seating, and lighting.³ In sum, they were vastly different in scale to the 2014 event (the only other Mar-A-Lago event, Complainant cites) and therefore the comparison of the events does not establish the usual rate for an event the size of the Trump campaign events held at Mar-A-Lago.

² The fee paid included the cost for use of guest rooms at Mar-A-Lago, where the standard rate was charged to and paid by the campaign. Complainant plays fast and loose with his math, and assumes much, albeit incorrectly.

³ A. Davidson, *Donald Trump and the Super Tuesday II View from Mar-A-Lago*, THE NEW YORKER (Mar. 16, 2016).

100344440047

Furthermore, the Commission's "long-standing opinion" is that "candidates have wide discretion over the use of campaign funds. If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use." 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) ("Personal Use E&J"]. Because such expenses would not exist irrespective of the campaign, they cannot constitute personal use. 11 C.F.R. § 113.1(g). No doubt, that is why the Complaint does *not* allege that the expenditures were made for personal use and even recognizes that "Mr. Trump and his family are not precluded from receiving rental fees from the Committee for its use of their properties." Instead, the complaint calls for Commission "scrutiny" because the "proportion" of campaign funds spent on Trump-related vendors to non-Trump-related vendors is higher than what Complainant would like. There is no authority for such "scrutiny," and the Complaint provides none. Indeed, at this stage the Commission's role is not to "scrutinize" campaign practices, but to determine if there is reason to believe a violation of the Act has occurred. *See, e.g.*, MUR 6554 (Friends of Weiner), Factual & Legal Analysis at 5 ("The Complaint and other available information in the record do not provide information sufficient to establish [a violation].").

Furthermore, the campaign is not barred from using Trump-related entities for services, nor is there a limit to the total amount of goods and services the campaign may purchase from the Trump Organization in relation to its purchases from other vendors. Since the campaign paid the Trump Organization for the full and fair market value of the services it provided to the campaign, there is no reason to believe the Respondent violated the law and therefore must be dismissed as a party to the Complaint.

III. CONCLUSION

In the end, the Complaint amounts to nothing more than an attempt to smear Mr. Trump, his candidacy, and his businesses. However, for the reasons mentioned above, the campaign and the Trump organization scrupulously adhered to the law and the Commission should find no reason to believe a violation occurred, dismiss the complaint, and close the file.



Alan Garten
The Trump Organization
725 Fifth Avenue
New York, NY 10022
(212) 832-2000

Counsel for Trump Organization